

# **MANAGEMENT OF OFFENDERS ETC. (SCOTLAND) ACT 2005**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

#### ***Integrated Management Of Offenders***

#### ***Section 3 – Community justice authorities***

12. This section sets out the nature, functions and duties of community justice authorities.
13. Subsection (1) provides an order-making power for Scottish Ministers to establish community justice authorities and to specify the areas covered by each community justice authority. In so doing the Executive intends to consult with local government and others in determining the number and boundaries of community justice authorities. While community justice authorities will typically cover a number of local authority areas, the Act does not preclude a community justice authority covering the area of one local authority.
14. Subsection (2) clarifies the status of community justice authorities. They are not crown bodies and consequently employees of community justice authorities are not civil servants.
15. The intention of subsection (3) is to confirm that the order made under subsection (1) may set out membership of the community justice authority, the number of members for each constituent local authority, the method and weighting of voting within the community justice authority and other detailed issues relating to the constitution of community justice authorities. It also enables the order to specify that local authorities are obliged to make available services and facilities to the community justice authority to support its work.
16. Provisions in subsection (3) are subject to conditions described in subsection (4). This subsection specifies that membership of community justice authorities is restricted to local government elected members who have been nominated by their own local authority where that local authority forms all or part of the community justice authority.
17. Subsection (5) sets out specific functions of the community justice authorities.
18. Subsection (5)(a) introduces a duty on community justice authorities to prepare and submit a plan for the management of relevant persons (as defined in section 1(2)) in the community justice authority area. In so doing, the community justice authority is obliged to consult with Scottish Ministers (in the exercise of their prisons functions), local authorities (lying within the community justice authority area), partner bodies (defined in subsection (23)) and others as Scottish Ministers may specify prior to submission to Scottish Ministers. The wording “at such intervals as the Scottish Ministers may determine” introduces flexibility on timing of preparation and submission of plans. References to “plan” in the Act mean the draft plan, whilst references to “area plan” mean the plan as approved by Scottish Ministers. Currently

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Criminal Justice Social Work groupings work to a 3 year planning cycle and thus the Act allows this cycle to continue, or for a different cycle to be established should that be deemed more appropriate. Scottish Ministers would intend only to determine these cycles following consultation with community justice authorities.

19. Subsection (5)(b) establishes a duty on community justice authorities to monitor the performance of constituent local authorities and Scottish Ministers (in exercise of their functions under the [Prisons \(Scotland\) Act 1989 \(c.45\)](#)), in delivering services detailed in the area plan. The mechanism for achieving this monitoring is set out later in section 4.
20. Subsection (5)(c)(i) provides community justice authorities with a power of intervention should it consider that the performance of a local authority does not meet requirements described within the area plan. Specifically the subsection enables the community justice authority to issue directions to the failing authority. Subsection (5)(c)(ii) enables the community justice authority to make recommendations to Scottish Ministers where it considers that the exercise of Scottish Ministers' powers under the [Prisons \(Scotland\) Act 1989 \(c.45\)](#) in compliance with the area plan is unsatisfactory.
21. Subsection (5)(d) places a duty on the community justice authority to share and promote best practice in offender management in reducing reoffending across the community justice authority area. The effect of this provision will be to support the sharing of local good practice and thus of quality enhancement in service delivery across its area.
22. Subsection (5)(e) provides the community justice authority with the power to distribute monies for community justice social work services (as listed under section 27A(1)) (grants in respect of community service facilities) and section 27B(1) (grants in respect of hostel accommodation for persons under supervision) of the [Social Work \(Scotland\) Act 1968 \(c.49\)](#). The intention is that decisions on the distribution of funds should take account of the services and programmes described in the area plans, so as to support the delivery of the plan.
23. Subsection (5)(f) sets out a new duty on community justice authorities to establish an information sharing process so that all relevant data about offenders can be shared between local authorities and other organisations party to arrangements for offender management. The Act does not detail how this should be done as local authorities are best placed to develop these mechanisms with local partners.
24. Subsection (5)(g) requires the community justice authorities to report to Scottish Ministers after the end of each financial year on the exercise of their functions. Subsection (9) requires the community justice authority to publish this report.
25. Subsection (6) allows community justice authorities to set conditions on grants paid to local authorities through section 3(5)(e) of the Act. Subsection (7) makes it clear that any conditions that community justice authorities attach to grants to local authorities, are subject to conditions set by Scottish Ministers.
26. Subsection (10) ensures that when the responsible authorities (for the purposes of section 10 of the Act) have prepared a report on the discharge of their functions under section 10 (i.e. the establishment and implementation of the joint arrangements for assessing and managing risks posed by certain offenders) and submitted it to the community justice authority for the area of that local authority, (in accordance with section 11(2)(c)) the community justice authority should submit this to Scottish Ministers.
27. Subsection (11) enables Scottish Ministers to amend subsection (5), to add, alter or remove functions of the community justice authority. This general power allows Scottish Ministers to alter the remit of community justice authorities without requiring an amendment by primary legislation where a change in remit is deemed appropriate. Any alterations would be made by order. It is intended that this power would be used in consultation with community justice authorities where functions are added by this

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means, they would be compatible with the nature of the role of community justice authorities set out in this subsection.

28. Subsection (12) enables any order made under subsection (11) to prescribe different provisions for different community justice authorities. Thus the power is precise and allows Scottish Ministers to vary the functions of individual community justice authorities where this is deemed necessary.
29. Subsection (13) provides that Scottish Ministers should inspect and assess the arrangements for the management of offenders by the community justice authorities, and the delivery of those services by local authorities. The intention here is to ensure that Scottish Ministers establish an objective means of assessing performance in order to be assured that performance is satisfactory and in line with the agreed area plan.
30. Subsection (14) provides Scottish Ministers with a power to provide guidance, or directions, in relation to the exercise of any functions under section 3 (community justice authorities) or any actings under section 3 (further provision as respects community justice authorities) of the Act. Scottish Ministers intend to draw up this guidance in discussion with the national advisory body described in the opening section of these notes. Powers of direction that could be used, for example, to ensure that all community justice authorities' annual reports contain certain common features.
31. Subsections (15), (16) and (17) limit the scope of the powers of direction contained in section 3(14). These provisions:
  - restrict the use of directions to occasions where guidance is not being complied with, or where it is not likely to be complied with;
  - restrict the powers of direction so that directions can only be issued following written notice of Scottish Ministers' intention to issue a direction;
  - include a Ministerial duty to consider any representations made to them within 7 days of issue of written notice;
  - provide the community justice authority with the right of appeal to the sheriff, against the terms of the directions; and
  - impose an obligation on Scottish Ministers to report to Parliament following the issue of directions.
32. Subsection (18) places a duty on local authorities to carry out its criminal justice social work duties, specified in section 27 of the Social Work (Scotland) Act 1968, in compliance as far as is possible with the area plan. This duty is necessary to ensure that the area plan is delivered consistently across the community justice authority area and that local authorities are bound to the contents of the area plan.
33. The effect of subsection (19) when read with subsection (24) is to place a similar duty on Scottish Ministers in respect of their functions under the [Prisons \(Scotland\) Act 1989 \(c.45\)](#).
34. Subsection (20)(a) obliges local authorities to comply with any directions issued by the community justice authority under subsection (5)(c). This duty is required to provide the community justice authority with recourse should a local authority fail to meet its obligations under the terms of the area plan.
35. Subsection (20)(b) places similar obligation on community justice authorities where directions have been issued by Scottish Ministers under subsection (14)(b).
36. Subsection (21) enables Scottish Ministers to approve submitted plans, or to direct the submitting community justice authority to revise the plan before submission. Scottish Ministers will expect plans to follow guidance issued under subsection (14) and to meet

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the consultation requirements within subsection (5)(a)(i). Scottish Ministers may seek views from the national advisory body in assessing submitted plans.

37. Subsection (22) indicates that a resubmitted plan is also subject to the provisions under subsection (21). This provision is necessary to clarify that a resubmitted plan will not be automatically approved by Scottish Ministers.
38. Subsection (23) defines the term “appropriate local authority” for the purposes of section 3 as a local authority the area of which is comprised within the area of a community justice authority. This definition precludes any single local authority from being subdivided by a community justice authority boundary. It would be impractical for a single local authority to be subject to more than one area plan operating in different parts of the local authority area. It also ensures that only elected members from local authorities within a community justice authority can be a member of the community justice authority under subsection (4).
39. Subsection (23) also defines the term “partner bodies” as such persons as for the time being designated by Scottish Ministers as such by order. Partner bodies could include police, Crown Office, local health boards and voluntary groups working with offenders. It is expected that this will be a dynamic group which may change over time and thus definition in primary legislation is undesirable. Establishing the identity of partner organisations by order also allows for a period of consultation with stakeholders on this issue.
40. Subsection (24) identifies those references to Scottish Ministers within section 3 of the Act which refer to Scottish Ministers exercising their functions under the [Prisons \(Scotland\) Act 1989 \(c.45\)](#) and which therefore will in practice will be exercised by the Scottish Prison Service.
41. Subsection (25) describes the Parliamentary procedure to which orders under this section are subject. Thus orders made under subsection (1) and (11) must be approved by a resolution of the Parliament (“affirmative procedure”) while an order made under subsection (23) will be subject to annulment in pursuance of a resolution of the Parliament (“negative procedure”).